

OLYMPIA J. SNOWE, MAINE, CHAIR
JOHN F. KERRY, MASSACHUSETTS, RANKING MEMBER

CHRISTOPHER S. BOND, MISSOURI
CONRAD BURNS, MONTANA
ROBERT F. BENNETT, UTAH
MICHAEL ENZI, WYOMING
PETER G. FITZGERALD, ILLINOIS
MIKE CRAPO, IDAHO
GEORGE ALLEN, VIRGINIA
JOHN ENSIGN, NEVADA
NORM COLEMAN, MINNESOTA

CARL LEVIN, MICHIGAN
TOM HARKIN, IOWA
JOSEPH I. LIEBERMAN, CONNECTICUT
MARY LANDRIEU, LOUISIANA
JOHN EDWARDS, NORTH CAROLINA
MARIA CANTWELL, WASHINGTON
EVAN BAYH, INDIANA
MARK PRYOR, ARKANSAS

MARK E. WARREN, REPUBLICAN STAFF DIRECTOR AND CHIEF COUNSEL
PATRICIA R. FORBES, DEMOCRATIC STAFF DIRECTOR AND CHIEF COUNSEL

United States Senate

COMMITTEE ON SMALL BUSINESS & ENTREPRENEURSHIP
WASHINGTON, DC 20510-6350

January 15, 2004

The Honorable Jeffrey W. Runge, M.D.
Administrator
National Highway Traffic Safety Administration
400 Seventh Street, S.W.
Washington, DC 20590

RE: Support of Petition for Reconsideration – Denman Tire Corporation; Federal Motor Vehicle Safety Standards; Tires (Docket No. NHTSA-03-15400)

Dear Administrator Runge:

As Chair of the Senate Committee on Small Business and Entrepreneurship, I take a very strong interest in how agencies handle their obligations under the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Flexibility Act (SBREFA) (P.L. 104-121). The National Highway Traffic Safety Administration's (NHTSA, Agency) recent rulemaking establishing higher performance requirements and more extensive testing procedures for various types of tires as mandated by the Transportation Recall, Enhancement, Accountability, and Documentation Act of 2000 (TREAD Act) (P.L. 106-414) has raised some serious concerns regarding NHTSA's compliance with the RFA.

On June 26, 2003, NHTSA published its final rule revising and updating safety performance standards for tires. The new Federal Motor Vehicle Safety Standards (FMVSS No. 139) requires radial tires to undergo more intensive high speed and endurance tests and a new low pressure test. On August 7, 2003, Denman Tire filed a petition for reconsideration of this rulemaking citing NHTSA's failure to comply fully with the RFA, in particular, NHTSA's certification that the regulation would not "have a significant economic impact on a substantial number of small entities."

The final rule excludes bias ply tires, but does not exclude limited production specialty radial tires. Because the rule will require specialty radial tire manufacturers to implement extensive new testing procedures for each type of tire, and each type of tire is produced in a small volume, the per unit cost of this new rule will be extremely high. In particular, the small businesses in this industry have informed me that this new standard will significantly affect their operations. It is possible that compliance with the new rule would cause these companies to go out of business as their specialty radial tires may no longer be competitive with similar styles of bias ply tires which are not affected by this new standard. These assertions suggest that NHTSA's certification of this rule as having no significant economic impact on a substantial number of small entities should be re-examined.

Although radial tires are acknowledged as superior technology for passenger car tires over bias ply tires, the final rule only applies to radial tires. By exempting all bias ply tires from this standard,

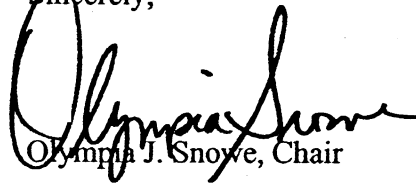
The Honorable Jeffrey W. Runge, M.D.
Administrator, NHTSA
Page 2

NHTSA has made specialty bias ply tires more economical, and thus more attractive than specialty radial tires. Specialty radial tires are just that -- manufactured for specific needs such as antique cars and off road vehicles, and in small numbers. There is no risk that exempting specialty radial tires, as NHTSA did for bias ply tires, would lead to greater driving hazards than currently exist since specialty radial tires would continue to be subject to current standards. Indeed, to the extent that consumers may opt for a less expensive specialty bias ply tire, NHTSA will have increased the risk of driving hazards related to the use of inferior tires. Such an outcome would be contrary to the intent of the TREAD Act which seeks to reduce driving hazards.

By certifying that the new regulation would not have a significant economic impact on a substantial number of small entities, NHTSA did not conduct an Initial Regulatory Flexibility Analysis (IRFA), or a Final Regulatory Flexibility Analysis (FRFA). Had it done so, the Agency would have been required to examine other alternatives which would accomplish the stated objectives of the applicable statutes. Under the RFA, one of the alternatives NHTSA would have had to consider would be "exemption from coverage of the rule, or any part thereof, for such small entities." (5 U.S.C. 603(c)(4)) Because of the low volume of specialty radial tires involved, and the significant economic impact this regulation is likely to have on the small businesses that produce them, NHTSA should grant Denman Tire's petition for reconsideration of this rule on behalf of the few small businesses in this industry, and conduct a full IRFA with particular attention on the alternative of exempting from coverage specialty radial tires produced in limited volumes.

Please feel free to contact Marc Freedman on the staff of the Committee on Small Business and Entrepreneurship at (202) 224-5175 if you have any questions.

Sincerely,



Olympia J. Snowe, Chair